



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1996

Ms. Inez VanderBurg
Attorney
Legal Services
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-0168

Dear Ms. VanderBurg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37803.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for, among other things, information relating to the polygraph examination of a specific employee. You contend that portions of the requested information are excepted from required public disclosure under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 19A of V.T.C.S. article 4413(29cc) makes the information that you have highlighted confidential. Section 19A provides:

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person *information acquired from the examination*. [Emphasis added.]

We understand that none of the exceptions to disclosure listed in subsection (d) apply in this case. Accordingly, the department must withhold from disclosure "information acquired from the examination" under section 552.101 of the Government Code. However, we believe that some of the information you have marked as being confidential was not acquired from the examination and therefore may not be withheld from disclosure. See Open Records Decision No. 430 (1985) at 5 (ruling that information revealing

location and cost of polygraph examination is not confidential under V.T.C.S. art. 4413(29cc), § 19A, because information is available from sources other than polygraph examination). We have marked the highlighted information that may be withheld from disclosure under section 19A.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/LBC/ch

Ref: ID# 37803

Enclosures: Marked documents

cc: Mr. Calvin E. Lee
Vice President & Chairman
Criminal Justice Committee
Austin NAACP
1704 E. 12th St.
Austin, Texas 78702
(w/o enclosures)